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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 97-239-C - ORDER NO. 97-942  
DECEMBER 31, 1997

✓  
MR

IN RE: Proceeding to Establish Guidelines for ) ORDER GRANTING  
an Intrastate Universal Service Fund ) IN PART AND  
 ) DENYING IN PART  
 ) PETITIONS

This matter comes before the Public Service Commission of South Carolina (the Commission) on Petitions for Reconsideration and/or Rehearing filed by AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corp. (MCI), and South Carolina Fair Share and the Women's Shelter (Fair Share and the Women's Shelter). We will consider each Petition individually.

AT&T's Petition first asks that we clarify the discussion in our Order No. 97-753 about the size of the Universal Service Fund (USF). On page 15 of our Order, we found the estimated size of the fund to be \$439.7 million. We must reiterate that the inclusion of this figure as the estimated size of the fund was done to comply with our State's statutory requirements. See S.C. Code Ann. Section 58-9-280(E)(4)(Supp. 1996). The actual size of the fund will be determined de novo in future Commission proceedings in this matter.

AT&T further asks us to clarify our assertion on page fourteen of the Order that states that "services to be funded are

all services mandated by the FCC and South Carolina State law." We hereby grant clarification to state that we meant that the services to be funded are services mandated by the FCC or South Carolina State law. Paragraph 5 of the AT&T Petition interprets our Order at 15 to state that the Local Exchange Carriers (LECs) will be permitted to determine the designated service areas. We do clarify by stating that, in our view, the LECs will determine the designated service areas, however, the designated service areas are subject to this Commission's approval.

In Paragraph 6 of its Petition, AT&T asks for clarification of the qualifications to be designated as a carrier of last resort (COLR). AT&T requests that we reconsider and revise the fourth sub-bullet item of the second bullet item of Section 2 of the proposed Guidelines, which is described at page 10 of the Order. Presently, the second sentence of that bullet reads as follows: "The COLR may satisfy its obligation to provide the defined services in part through the lease of unbundled network elements (UNEs)." AT&T states that this sentence should read as follows, in order to conform to FCC requirements: "The COLR may also satisfy its obligation to provide the defined services over its own facilities in whole or in part through the lease of unbundled network elements (UNEs)." According to AT&T, this would make clear that a carrier using only UNES or a combination of UNES and resold services could qualify as a COLR. We concur, and order that the sentence be modified accordingly. For the same reason, AT&T requests that the last sentence in the "bullet" be deleted in

its entirety. This sentence presently reads as follows: "The Commission may define a minimum percentage of owned facilities and/or leased UNEs for qualification as a COLR." We agree with AT&T. The resale portion of services provided by any COLR will not be eligible for USF support. Further, the rule promulgated by the FCC is that to be eligible for universal service support, a carrier may provide the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services, with "own facilities" being defined as including, but not being limited to "facilities obtained as unbundled network elements," regardless of the percentage of the facilities that are made up of UNEs. We hereby adopt this rule, and hold that the last sentence in the "bullet" should be deleted in its entirety.

AT&T also requests that the Commission reconsider and revise the second and third bullet items of Section 6 of the proposed Guidelines, described at pages 10-11 of the Order. We concur with AT&T that the first sentence in the Second Bullet should be clarified to acknowledge, as is clear from the remainder of the proposed guidelines, that "its own facilities" also includes leased unbundled network elements; and the first sentence in the Third Bullet should be modified to provide that a COLR may provide the defined services in whole or in part through UNEs. This is consistent with our view of the law in this area.

Also, we agree with AT&T's proposal to delete the second and fourth sentences of the Third Bullet. For facilities-based COLRs,

the level of USF support will be the difference between the cost of providing service in an area and the maximum allowable price set by the Commission. That "cost of providing service" will be determined generally for COLRs in an area; i.e., there will not be different costs determined for each COLR. Consequently, if one carrier is able to achieve lower costs, it will have a larger margin and will be able to increase its market share by lowering its price. A general lowering of the market price will in turn be a signal to the Commission that costs have gone down and that it is then appropriate to recalculate and lower the levels of USF support. With regard to fourth sentence of the Third Bullet, there is certainly no reason why the benefits of one carrier's cost-cutting market efficiencies would be transferred to its less efficient competitor, where this Commission, by law has already determined that the less efficient competitor is already being fully and fairly compensated for any UNEs that it is providing.

We deny all other grounds stated by AT&T's Petition as being non-meritorious.

With regard to MCI's Petition, we have concluded that certain portions of it should be granted.

We hold that, in so far as Order No. 97-753 suggests that a COLR may not satisfy the facilities requirement of Section 214(e) of the Telecommunications Act of 1996 unless it actually owns some of the facilities utilized in providing the defined services, as opposed to leasing UNEs, as seen at page 10 of Order No. 97-753, we hereby clarify to state, as we stated above, that it may

satisfy the requirements even while leasing UNEs exclusively. We did not intend to conflict with the Federal law in this regard.

We also agree with MCI that no minimum percentage of owned facilities may be defined by this Commission to qualify a carrier as a COLR. As we stated above, we have revised the second and third bullet items of Section 6 of the Proposed Guidelines, discussed in pages 10-11 of the Order. A carrier may provide service with any percentage of owned facilities and any percentage of UNEs.

Also, again, as stated in the Paragraphs considering the AT&T Petition, we hold that the estimated size of the Universal Service Fund was listed solely to comply with State Statutory law on USF. See S.C. Code Ann. Section 58-9-250 (E)(4) (Supp. 1996). Again, the actual size of the fund will be determined de novo in a future Commission proceeding in this matter.

The remainder of MCI's Petition is hereby denied, as those portions are without merit.

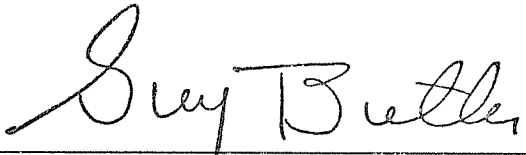
We have also considered the Petition filed by South Carolina Fair Share and the Women's Shelter in this matter, and grant said Petition in part, as follows. In Paragraph 1 of the Petition, these two Petitioners assert that Lifeline rates or Lifeline equivalences apply to the Women's Shelter's lines. We agree and hereby hold that Lifeline rates or Lifeline equivalences will apply to transitional subsidized housing provided by the Women's Shelter of Columbia for low income persons who would otherwise be eligible for Lifeline rates. The remainder of the Petition (if

there are any outstanding issues) is denied.

Having examined all Petitions in the case, we hereby grant reconsideration and/or clarification as noted above. Any remaining portions of any of the three Petitions not addressed are hereby denied as being non-meritorious.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)